

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE APRIL 21, 2003

AMENDED IN SENATE MARCH 28, 2003

**SENATE BILL**

**No. 543**

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**Introduced by Senator Machado**

February 20, 2003

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An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill, *with certain exceptions*, would prohibit the water produced from a groundwater cleanup operation from being used by the operator of a groundwater cleanup operation, or from being transferred, assigned, or conveyed to a third party for use, until a replacement water supply has been provided to every ~~groundwater right holder~~ *public water system* injured by the contamination. The bill would provide that no right shall vest in the operator of a groundwater cleanup operation *solely* by virtue of its extraction, treatment, and discharge of water from that operation.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP  
OPERATION

1249. *Except where an agreement has been entered into between the operator of a groundwater cleanup operation and all injured public water systems, or as otherwise expressly provided in a consent decree or other judicial order, the water produced from a groundwater cleanup operation may not be used by the operator of a groundwater cleanup operation, or transferred, assigned, or conveyed by that operator to a third party for use, until a replacement water supply has been provided to every public water system injured by the contamination.*

1249.2. *Notwithstanding any other provision of law, no right shall vest in the operator of a groundwater cleanup operation solely by virtue of its extraction, treatment, and discharge of water from that operation.*

1249.3. (a) *The definitions set forth in this section govern the construction of this chapter.*

(b) *“Groundwater cleanup operation” means any operation or program designed or implemented to remediate or abate groundwater contamination pursuant to an approved work plan or order issued by a federal agency or a state agency, including a regional board, for the cleanup or remediation of contaminated groundwater.*

(c) *“Injury” or “injured” means harm caused by any of the following:*

(1) *Contamination of a public water system’s supply source.*

(2) *The inability of a public water system to use a groundwater supply source because it is threatened by contamination.*

(3) *The inability of a public water system to use a groundwater supply source because its use could cause a migration or dispersal of the contamination.*

1 (d) (1) “Operator” means any person or entity engaged in a  
2 groundwater cleanup operation or agent of that person or entity  
3 designated by that operator for that purpose if the person or entity  
4 has been identified by a state or federal agency, or a court of  
5 competent jurisdiction, as responsible or potentially responsible  
6 for all or part of the groundwater contamination.

7 (2) Notwithstanding paragraph (1), “operator” does not  
8 include a public water system that has been identified by a state or  
9 federal agency, or a court of competent jurisdiction, as responsible  
10 or potentially responsible for all or part of the groundwater  
11 contamination as a result of its ownership or operation of a well  
12 or its production of groundwater for distribution to its customers.

13 (e) “Public water system” has the same meaning as that set  
14 forth in subdivision (h) of Section 116275 of the Health and Safety  
15 Code.

16 (f) “Replacement water supply” means a water supply  
17 delivered to the public water system to be substituted for the  
18 contaminated groundwater supply that meets both of the following  
19 requirements:

20 (1) The delivery of the replacement water supply does not  
21 impose additional costs upon the public water system.

22 (2) The replacement water supply is of comparable quantity,  
23 quality, and reliability to that existing prior to the contamination  
24 of the groundwater supply, including water that is required for  
25 “peaking” and fire flow pipeline distribution capacity.

26 (g) “Work plan” means a schedule of actions to clean up or  
27 remediate contaminated groundwater, that is approved by a state  
28 or federal agency for the purposes of the cleanup and remediation.

29 1249.4. This chapter does not affect rights of any person or  
30 entity, including the operator, to beneficially use groundwater that  
31 is produced from facilities other than those used in the  
32 groundwater cleanup operation.

33 ~~1249. The water produced from a groundwater cleanup~~  
34 ~~operation may not be used by the operator of a groundwater~~  
35 ~~cleanup operation or transferred, assigned, or conveyed to a third~~  
36 ~~party for use, until a replacement water supply has been provided~~  
37 ~~to every groundwater right holder injured by the contamination.~~

38 ~~1249.2. Notwithstanding any other provision of law, no right~~  
39 ~~shall vest in the operator of a groundwater cleanup operation by~~

1 virtue of its extraction, treatment, and discharge of water from that  
2 operation.

3 ~~1249.3.—(a) The definitions set forth in this section govern the~~  
4 ~~construction of this article.~~

5 ~~(b) “Groundwater cleanup operation” means any operation or~~  
6 ~~program designed or implemented to remediate or abate~~  
7 ~~groundwater contamination pursuant to an approved work plan or~~  
8 ~~order issued by a federal agency or a state agency, including a~~  
9 ~~regional board, for the cleanup or remediation of contaminated~~  
10 ~~groundwater.~~

11 ~~(c) “Groundwater right holder” means any person or~~  
12 ~~government entity that possesses a right to percolating~~  
13 ~~groundwater and not groundwater within a subterranean stream~~  
14 ~~flowing through known and definite channels as provided by~~  
15 ~~existing law.~~

16 ~~(d) “Injury” or “injured” means harm caused by any of the~~  
17 ~~following:~~

18 ~~(1) Contamination of a groundwater right holder’s supply~~  
19 ~~source.~~

20 ~~(2) The inability of a groundwater right holder to use any~~  
21 ~~groundwater supply source because it is threatened by~~  
22 ~~contamination.~~

23 ~~(3) The inability of a groundwater right holder to use any~~  
24 ~~groundwater supply source because its use will cause a migration~~  
25 ~~or dispersal of the contamination.~~

26 ~~(e) “Operator” means any person engaged in a groundwater~~  
27 ~~cleanup operation or agent of that person designated by the~~  
28 ~~operator for that purpose. The term “operator” shall only apply to~~  
29 ~~a person that has been identified by a state, federal agency, or a~~  
30 ~~court of competent jurisdiction as responsible or potentially~~  
31 ~~responsible for all or part of the groundwater contamination.~~

32 ~~(f) “Replacement water supply” means a water supply~~  
33 ~~delivered to the groundwater right holder to be substituted for the~~  
34 ~~contaminated groundwater supply, which does not impose~~  
35 ~~additional costs upon the groundwater right holder, and which is~~  
36 ~~of comparable quantity and quality to that existing prior to the~~  
37 ~~contamination of the groundwater supply, including water that is~~  
38 ~~required for “peaking” and fire flow pipeline distribution~~  
39 ~~capacity.~~

1     ~~(g) “Work plan” means a schedule of actions to clean up or~~  
2     ~~remediate contaminated groundwater, that is approved by a state~~  
3     ~~or federal agency, for the purposes of the clean up and remediation.~~

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